STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RODES FRANCILLON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

RODES FRANCILLON,

Respondent-Appellee.

UNPUBLISHED
October 25, 2005

No. 255737
Wayne Circuit Court
Family Division
LC No. 00-393949

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Petitioner appeals by leave granted the trial court's order granting respondent's motion to suppress a written confession. We reverse the trial court's decision, lift the stay previously imposed, and remand for further proceedings.

Respondent (DOB 12-19-88) is charged with criminal sexual conduct in the first degree, (victim under thirteen years of age, MCL 750.520b(1)(a)). After the petition was filed, respondent's counsel requested and obtained an order directing that respondent be administered a polygraph examination. Subsequently, respondent moved to suppress a written statement he made on the day he appeared for the polygraph examination.

At an evidentiary hearing, the investigating officer testified that respondent and his parents appeared at the police station for the polygraph examination. Respondent's attorney arrived at a later time. Respondent's father signed a consent form authorizing a polygraph examination to be administered to respondent. Respondent was not placed in handcuffs, and was not told that he could not leave. The investigating officer observed the interaction between respondent and the polygraph examiner. The polygraph examiner advised respondent of his *Miranda* rights and the rights that pertained to the taking of the polygraph examination itself. When respondent learned that the polygraph examination recorded his body responses, he became nervous and made incriminating statements to the polygraph examiner.

Subsequently, respondent, his parents, and his attorney met with the investigating officer in a conference room. Respondent chose to respond to questions posed by the investigating officer, who wrote out his answers. Respondent's parents and attorney did not object to the procedure or tell respondent not to answer questions. After respondent finished his statement, he

reviewed it, as did his parents and his attorney. Respondent signed the statement after reviewing it. Respondent left the station with his parents.

The trial court granted respondent's motion to suppress his written statement, finding that it was not established that the polygraph examiner sufficiently advised him of his rights. The trial court concluded that respondent's written statement was not voluntarily given because he did not knowingly and intelligently waive his rights.

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. The prosecution may not use a custodial statement unless it demonstrates that prior to questioning, the accused was informed of his rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). *Miranda* warnings are not required unless the accused is subject to a custodial interrogation. A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). To determine whether the person was in custody at the time of interrogation, the court must look at the totality of the circumstances to ascertain whether the person reasonably believed that he was not free to leave. The ultimate question of whether a person was in custody and thus entitled to *Miranda* warnings before interrogation is a mixed question of law and fact which must be answered independently by the reviewing court after a de novo review of the record. Absent clear error, we will defer to the trial court's historical findings of fact. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997).

Compliance with *Miranda* does not dispose of the issue of the voluntariness of a confession. *People v Godboldo*, 158 Mich App 603, 605-606; 405 NW2d 114 (1986). In determining voluntariness, the court must consider the totality of the circumstances, including the duration of detention and questioning, the person's age, intelligence, and experience, the person's physical and mental state, and whether the person was threatened or promised leniency. *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). No single factor is determinative. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

The voluntariness of a juvenile's confession is also tested by the totality of the circumstances, but with consideration of additional safeguards. *In re SLL*, 246 Mich App 204, 209; 631 NW2d 775 (2001). Factors to consider include: whether the juvenile was advised of his *Miranda* rights, the degree of police compliance with statutory requirements and court rules, the presence of an adult custodian or parent, the juvenile's personal background, the juvenile's age, education, and intelligence level, the extent of the juvenile's prior experience with the police, the length of detention before the statement was made, the repeated and prolonged nature of the questioning, and whether the juvenile was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. *People v Hall*, 249 Mich App 262, 268; 643 NW2d 253 (2002); *Givans*, *supra*.

We reverse the trial court's decision, lift the stay previously imposed, and remand for further proceedings. The trial court seemed to conclude that because a petition had been filed, respondent was in custody when he went to the police station to take a polygraph examination, and subsequently when he made a statement. No evidence in the record supported such a finding. The fact that an interview takes place at a police station does not, in and of itself, render

the questioning custodial in nature. *Mendez*, *supra* at 383-384. Respondent was not housed in the juvenile detention center. He requested and received an order for a polygraph examination. Respondent, his parents, and his attorney went to the police station voluntarily. No evidence showed that respondent was restrained or at any time was told that he could not leave the station. After respondent made an incriminating statement, he was allowed to leave the station. The trial court clearly erred in finding, by implication, that respondent was in custody when he was questioned, *id*., and thus was entitled to be given *Miranda* warnings.

Moreover, the trial court clearly erred in finding that respondent was not sufficiently advised of his *Miranda* rights by the polygraph examiner. The investigating officer testified that the polygraph examiner specifically advised respondent of his rights. No evidence indicated that respondent did not understand his rights, or that he demonstrated any reluctance to make his statement. Respondent made the statement in the presence of his parents and his attorney. No evidence showed, and respondent did not suggest, that he was threatened with abuse, questioned for a prolonged period, or deprived of food or sleep. *Hall*, *supra*; *Givans*, *supra*. We conclude that under the totality of the circumstances, the trial court clearly erred in concluding that respondent's statement was involuntary.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder